

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RICK A. HOLTZ,

Petitioner,

v.

Case No. 06-C-0186

PHIL KINGSTON,

Respondent.

ORDER

On February 28, 2006, the court warned the petitioner that it would dismiss the petition without prejudice so that the petitioner could exhaust his state court remedies on his unexhausted claim of ineffective assistance of appellate counsel unless the petitioner chose to abandon the claim and proceed only on his exhausted claims. On March 13, 2006, the petitioner indicated that he did not wish to abandon his claim of ineffective assistance of appellate counsel. In accordance with the court's February 28, 2006, order, the court dismisses this action without prejudice.

Accordingly,

IT IS ORDERED that the action be and the same is hereby DISMISSED without prejudice so that the petitioner may return to state court to exhaust his state court remedies.

IT IS FURTHER ORDERED that the petitioner's motion for leave to proceed *in forma pauperis* be and the same is hereby DENIED as moot; the petitioner has already paid the \$5 filing fee.

The Clerk is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 21st day of March, 2006.

BY THE COURT:

s/J.P. Stadtmueller
J.P. STADTMUELLER
U.S. District Judge